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Court appeal ruling agrees Corps complies with law

Walla Walla, Wash., – A federal district court judge in Portland, Ore., ruled in favor of the U.S. Army Corps of Engineers on Jan. 9., finding that the Corps did not violate the federal Administrative Procedures Act.

Judge Helen J. Frey, in the United States District Court for the District of Oregon, entered an opinion in favor of the Corps and regional business entities and against plaintiffs in the so-called "Clean Water Act" lawsuit. The lawsuit was filed in March 1999.

In the ruling, Frey found that the Corps considered all relevant factors and had not acted in an arbitrary and capricious manner or contrary to law when it concluded that measures set forth by the National Marine Fisheries Service and the U.S. Fish and Wildlife Service 2000 biological opinions to reduce water temperatures satisfied the Corps' obligations under the Clean Water Act.

The issue before the court was whether this conclusion was based on a consideration of the relevant factors and whether there had been a clear error of judgment.

Other defendants in the case include: Potlatch Corp., Northwest Pulp & Paper Association, and Northwest Irrigation Utilities. Plaintiffs are National Wildlife Federation, Sierra Club, Idaho Rivers United, American Rivers, Pacific Coast Federation of Fisherman's Associations, Institute for Fisheries Resources, Washington Wildlife Federation, and Idaho Wildlife Federation.

Pre-dam maximum water temperatures in both the lower Snake and the Clearwater rivers have been recorded as high as or exceeding those recorded in the current lower Snake River reservoir system.

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The NMFS 2000 biological opinion contains specific measures designed to reduce water temperatures for the benefit of Endangered Species Act listed species and a framework for water quality plans. In issuing the 2001 record of decision, the Corps agreed to take the actions

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prescribed in the National Marine Fisheries Service 2000 Biological Opinion.

Plaintiffs conceded that the Corps' 2001 record of decision adequately addressed water quality standards for dissolved gas, but contended that the Corps should be required to take measures beyond compliance with the biological opinions in order to mitigate temperature exceedences.

"The Corps bases its decisions and actions on the best science and engineering available, and represents the best interests of the American taxpayer while protecting natural resources," said Lt. Col. Edward J. Kertis, Jr., Walla Walla District commander. "The ruling verifies that our decision-making process for the operation of these multi-purpose projects is valid," he said.

More information on the Corps is available on the Walla Walla District Web Site at www.nww.usace.army.mil.

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